

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EQUAL EMPLOYMENT,)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	3:18-cv-00101
)	
WEST MEADE PLACE LLP, d/b/a)	
THE HEALTHCARE CENTER AT)	
WEST MEADE PLACE)	
)	
Defendant.)	

DEFENDANT’S BRIEF ON USE OF CARMA KEAN’S DEPOSITION AT TRIAL

Pursuant to the Court’s Order (Doc. 197), defendant West Meade Place, LLP (WMP), submits this brief regarding the use of portions of Carma Kean’s deposition at trial.

At the pre-trial conference, WMP indicated its intent to present portions of Ms. Kean’s deposition during its case-in-chief. Plaintiff Equal Employment Opportunity Commission (EEOC) objected to the reading of Ms. Kean’s deposition during WMP’s case-in-chief as Ms. Kean, the charging party in this case, will be present and available to testify live at trial.

A review of the relevant case law shows that while there is no definitive ruling from the Sixth Circuit on this issue, the district courts in this jurisdiction have disallowed a party from reading the adverse party’s deposition during the party’s case-in chief. The courts have only allowed the party to use the deposition for impeachment purposes after the adverse party’s live testimony. *See Short v. Marvin Keller Trucking*, No. 5:19-CV-471, 2021 WL 5410888, at *1 (E.D. Kentucky Nov. 18, 2021 (prohibiting plaintiffs from introducing portions of the depositions of the owner and CEO of

the defendant trucking company during plaintiffs' case-in-chief because the witnesses will be present and available to testify live at trial, but allowing plaintiffs to use the prior testimonies for impeachment purposes); *Stansbury v. Hopkins Hardwoods, Inc.*, No. 4:15-CV-00016, 2018 WL 2977439, at * 5 (W.D. Kentucky March 2, 2018)(prohibiting plaintiff from reading the deposition testimony of president of defendant company into the record as the president was present and available to testify live at trial); *Gonzales Prod. Sys., Inc. v. Martinrea Int'l, Inc.* 310 F.R.D. 341, 343-4 (E.D. Mich. 2015)(prohibiting the reading of deposition into the record when deponent would testify live and limiting use of deposition for impeachment); *In re Air Crash at Lexington*, No. 5:06-CV-316-KSF, 2008 WL 2954971, at *4 (E.D. Kentucky, July 30, 2008)(ruling that videotaped depositions may not be used in the case-in-chief of plaintiffs but may be used for purposes of impeachment after the witnesses have testified live).

Based on the foregoing case law, WMP notified the EEOC that it will not use portions of Ms. Kean's deposition testimony during WMP's case-in-chief but will use her deposition for impeachment purposes. WMP also asked the EEOC if it would agree not to read portions of Mr. James Wright's deposition during the EEOC's case-in-chief consistent with the case law and practice in this jurisdiction. The EEOC represented at the pre-trial conference that it will read portions of Mr. Wright's prior deposition testimonies both in his individual and representative capacity into the record during its case-in-chief. Mr. Wright will be present and available to testify live at trial. The EEOC declined WMP's request that the EEOC refrain from using Mr. Wright's deposition during the EEOC's case-in-chief. WMP respectfully submits that the case law applies equally to WMP and the EEOC. The EEOC should be similarly precluded from reading portions of Mr. Wright's deposition during the EEOC's case-in-chief as he is available to testify live at trial, consistent with

the case law and practice in this jurisdiction.

HOWELL & FISHER, PLLC

/s/ Fetlework Balite-Panelo

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CERTIFICATE OF SERVICE

I certify that on October 11, 2022, the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to Faye A. Williams, Amy Black and Jessi Eisenhart, Equal Employment Opportunity Commission, Memphis District Office, 1407 Union Avenue, Suite 900, Memphis, TN 38104 and all parties indicated on the electronic filing receipt. All other parties will be served by regular U. S. Mail. Parties may access this filing through the Court's electronic filing system.

/s/ Fetlework Balite-Panelo

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